

**United States Environmental Protection Agency  
Region 5**

<b>IN THE MATTER OF:</b>	)	
	)	
Nelson Paint Company	)	<b>FINDING OF VIOLATION</b>
Kingsford, Michigan	)	
	)	<b>EPA-5-04-MI-02</b>
	)	
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7401 <u>et seq.</u>	)	

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**FINDING OF VIOLATION**

The United States Environmental Protection Agency finds that Nelson Paint Company (Nelson) is violating Sections 183 and 111(e) of the Clean Air Act (Act), 42 U.S.C. §§ 7511b and 7411(e). Specifically, Nelson is violating the National Volatile Organic Compound Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D as follows:

**Regulatory Authority**

1. Section 183(e) of the Act, 42 U.S.C. § 7511b(e), authorizes U.S. EPA to promulgate regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).
2. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated National Volatile Organic Compound Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (40 C.F.R. §§ 59.400 through 59.413, and Appendix A).
3. 40 C.F.R. § 59.408(b) requires each manufacturer and importer of any architectural coating subject to Subpart D to submit an initial notification report no later than September 13, 1999 or within 180 days after the date that the first architectural coating is manufactured or imported, whichever is later.
4. 40 C.F.R. § 59.405(a)(2) requires each manufacturer and importer of any architectural coating subject to Subpart D

to provide information regarding thinning of the coating on the label or lid of the container in which they sell or distribute the coating.

5. 40 C.F.R. § 59.405(a)(3) requires each manufacturer and importer of any architectural coating subject to Subpart D to display the VOC content of the coating on the label or lid of the container in which they sell or distribute the coating. The VOC content must be indicated either as the actual VOC content of the coating, or as the VOC content limit with which the coating is required to comply, and does comply.
6. 40 C.F.R. § 59.401 defines "traffic marking coating" as a coating formulated and recommended for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.
7. 40 C.F.R. § 59.402(a) requires each manufacturer and importer of any architectural coating subject to this subpart to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of Subpart D.

#### **Factual Background**

8. Nelson owns and operates a coating manufacturing facility at One Nelson Drive, Kingsford, Michigan.
9. Nelson manufactures and distributes at least 77 coatings, including, but not limited to, those listed in Table A. These coatings are recommended for field application to stationary structures and their appurtenances.
10. Since 1960, Nelson has manufactured and distributed "architectural coatings," as defined in 40 C.F.R. § 59.401.
11. Nelson's initial notification report is dated September 13, 2000.
12. The labels of E&I 20 34 and SG 1 11 do not portray Nelson's recommendation on thinning.

Table A.

Coating	VOC Content (g/L)	Manufactured in:		
		1999/2000	2001	2002
E&I 22 4-DR	436		X	
E&I 22 5	584	X		
E&I 10 14	492	X		
E&I 10 19	487	X	X	
E&I 2 6	499	X	X	X
E&I 3 15	475	X	X	X
E&I 4 4	481	X		
E&I 5 15	485	X	X	
E&I 5 2	483	X	X	X
E&I 6 44	487	X	X	X
Q 1 3	482	X	X	
Q 1 4	485	X	X	
Q 1 6	451	X	X	X
E&I 2 3	539		X	X
Q 1 1	469		X	X
E&I 17 21	558	X	X	X
E&I 17 24	558	X	X	X
E&I 17 45	554	X	X	X
E&I 17 23	552			X
E&I 20 19	494	X	X	
E&I 20 34	555	X	X	X
SG 1 11	394	X		
P 4 3	416	X	X	X
PF 1 2	446	X	X	
PF 1 8	452	X	X	X

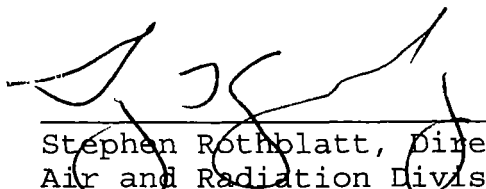
13. In its November 3, 2003 response to U.S. EPA's information request, Nelson provided the data in Table A.
14. The product information sheets for E&I 22 4-DR and E&I 22 5 state that each is a "specialty fast drying paint for marking floors, sidewalks, and streets."
15. E&I 22 4-DR and E&I 22 5 are "traffic marking coatings," as that term is defined at 40 C.F.R. § 59.401.
16. The VOC content limit for traffic marking coatings, as stated in Table 1 of Subpart D, is 150 grams of VOC per liter of coating.
17. E&I 10 14, E&I 10 19, E&I 2 6, E&I 3 15, E&I 4 4, E&I 5 15, E&I 5 2, E&I 6 44, Q 1 3, Q 1 4, Q 1 6, E&I 2 3, and Q 1 1 are "industrial maintenance coatings," as that term is defined at 40 C.F.R. § 59.401.
18. The VOC content limit for industrial maintenance coatings, as stated in Table 1 of Subpart D, is 450 grams of VOC per liter of coating.
19. E&I 17 21, E&I 17 24, E&I 17 45, and E&I 17 23 are "antenna coatings," as that term is defined at 40 C.F.R. § 59.401.
20. The VOC content limit for antenna coatings, as stated in Table 1 of Subpart D, is 530 grams of VOC per liter of coating.
21. E&I 20 19, E&I 20 34, and SG 1 11 are "nonflat coatings," as that term is defined at 40 C.F.R. § 59.401.
22. The VOC content limit for nonflat coatings, as stated in Table 1 of Subpart D, is 380 grams of VOC per liter of coating.
23. P 4 3 is a "flat coating," as that term is defined at 40 C.F.R. § 59.401.
24. The VOC content limit for flat coatings, as stated in Table 1 of Subpart D, is 250 grams of VOC per liter of coating.
25. PF 1 2 and PF 1 8 are "floor coatings," as that term is defined at 40 C.F.R. § 59.401.
26. The VOC content limit for floor coatings, as stated in Table 1 of Subpart D, is 400 grams of VOC per liter of coating.

27. Nelson never paid exceedance fees for the coatings listed in Table A.
28. Nelson has not designated a limited quantity of coatings to be exempt from the VOC content limits in a manner consistent with 40 C.F.R. § 59.404.

Violations

29. Nelson is in violation of 40 C.F.R. § 59.408(b) by failing to submit an initial notification report by September 13, 1999.
30. Since September 13, 1999, Nelson has violated 40 C.F.R. § 59.405(a)(2) by failing to provide a statement of its recommendation on thinning on its containers of E&I 20 34 and SG 1 11.
31. Since September 13, 1999, Nelson has violated 40 C.F.R. § 59.402(a) by exceeding the VOC content limits for the coatings referenced in Table A.

3/21/09  
Date

  
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Stephen Rothblatt, Director  
Air and Radiation Division

ACTING

**CERTIFICATE OF MAILING**

I, Shanee Rucker, certify that I sent a Finding of Violation, No. EPA-5-04-MI-02, by Certified Mail, Return Receipt Requested, to:

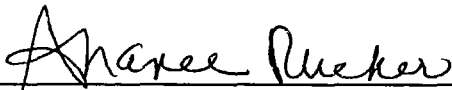
Donald P. Chartier, Vice President  
Nelson Paint Company  
P.O. Box 2040  
One Nelson Drive  
Kingsford, Michigan 49802-2040

I also certify that I sent copies of the Finding of Violation by first class mail to:

Don DeGrand  
Marquette District Office  
1190 U.S. 41 South  
Marquette, MI 49855-9198

Tom Hess  
Enforcement Unit Manager  
Air Quality Division  
Michigan Department of Environmental Quality  
Constitution Hall, 3<sup>rd</sup> Floor North  
525 West Allegan Street  
P.O. Box 30260  
Lansing, Michigan 48933

on the 30<sup>th</sup> day of March, 2004.

  
Shanee Rucker,  
Administrative Program Assistant  
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 1564 8061